



Commonwealth
of Massachusetts

OCPF Online

www.mass.gov/ocpf

Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

December 30, 2003

AO-03-08

Denis Guyer
1 Haworth Street
Dalton, MA 01226

Re: Receipt of discounted printing or engraving work

Dear Mr. Guyer:

This letter is in response to your request for an opinion regarding the receipt of discounted printing or engraving work.

You have stated that you are a full-time employee of Crane and Company Incorporated of Dalton, Massachusetts. Crane owns and operates a printing and engraving operation in North Adams known as Excelsior Process and Engraving. As an employee of Crane, you are given a 50% discount on any printing or engraving work¹ that you buy from Excelsior. Throughout your twelve-year career at Crane, you have had occasion to use this benefit, which is available to all employees of Crane, several times.

You recently ordered invitations, response cards, and envelopes from Excelsior for use in a political fundraiser to benefit your candidacy for State Representative from the Second Berkshire District. Your committee will pay for the invitations, cards and envelopes. You have received the invoice from Excelsior, less the 50% discount.

I understand, based on conversations between OCPF staff and Crane officers, that pursuant to the discount, Crane sells printing and engraving to employees at the same prices that it normally charges to trade customers. It does not matter to Crane what employee of the corporation is asking for the discount, or the purpose for which the discounted goods will be used. The rate is the same regardless of the person's position in the corporation, e.g., a custodian employed by Crane would be

¹ The discount is provided for printed or engraved paper goods. Crane is not in the business of printing bumper stickers, yard signs or banners.

given the same discount as the corporation's President. The discount is often used by employees for weddings, birth announcements, or other jobs that could result in a savings substantially greater than the savings you would realize from the discount for the political fundraiser printing. For example, if a person were to purchase "higher end" stationery for a wedding to which 250 persons would be invited, the discount would be substantially greater than \$500.

QUESTION

May you take advantage of your employee discount and purchase the political fundraiser invitations as described above?

ANSWER

Yes, provided that the discount is consistent with the discounts provided to other employees as part of a pre-existing employment relationship, and your committee reports an in-kind contribution from you in the amount of the discount.

DISCUSSION

As a business corporation, Crane may not "directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office..." See M.G.L. c. 55, § 8. The office closely scrutinizes any situation involving the potential use of corporate resources to influence elections. See, e.g., AO-01-23 (stating that a candidate may solicit businesses for funds to be used to distribute a guide for purposes of providing information and assistance to senior citizens, but cautioning that the guide may not be used for political purposes). As noted in that opinion, "section 8 indicates a deep concern by the Legislature of corporate involvement in political fundraising."

Because Section 8 is a criminal statute, however, it must be narrowly construed. See Weld for Governor v. Director of OCPF, 407 Mass. 761, 766 (1990). The office has not previously issued an opinion relating to whether a corporation may provide a discount, customarily offered to employees as a fringe benefit of employment, to an employee who happens to be a candidate, for goods or services to be used in the candidate's campaign.

The campaign finance law defines "contribution" to include any contribution of money or "anything of value" to a candidate or political committee for the "purpose of influencing [that candidate's] nomination or election." See M.G.L. c. 55, § 1. The definition specifically includes discounts or gifts. Not all gifts or discounts, however, are contributions. See Weld, in which the court emphasized that whether a payment is a contribution depends on whether the "payor's main and overarching goal" is to promote the candidacy of the recipient. 407 Mass. at 269. Although Weld concerned transfers between candidates for governor and lieutenant governor running as a team, the office has applied the analysis in determining whether a corporation may provide discounts or employment benefits to candidates. See AO-95-38 (an association made up of corporations may provide discounted tickets to awards dinner to an elected official since purpose of discount was to promote the association by helping to make the event a success), and AO-01-32 (a corporation may pay for an employee to take an externship with a political committee where the purpose was not to help the committee but instead to retain the corporation's ability to keep promising employees in the long-

term while at the same time providing employees with an opportunity to expand their skills and experience).

Consistent with this reasoning, if a corporation provides a *bona fide* fringe benefit of a discount for goods or services purchased by an employee from the corporation, which the employee uses for political purposes, the discount is not a contribution from the corporation to the candidate. The determination of whether such a discount is “*bona fide*” is made by assessing various factors, including whether the discount is routinely offered in the ordinary course of business (i.e., it is offered on a non-political basis consistent with a pre-existing employment relationship), the amount of the discount, the amount of discounts that have customarily been provided to other employees, whether the discount is available to all employees of a corporation regardless of an employee’s position in the corporation, whether the corporation provides the discount regardless of the purpose that the goods or services will be used for, and the nature of the goods or services provided.

Based on the facts presented, it would appear that the discount is a *bona fide* fringe benefit offered to all Crane employees, and is not being offered for the purpose of enhancing your candidacy.

Since the discount is being provided to you personally, as an employee, your political committee should report the receipt of an in-kind contribution from you in the amount of the discount. The in-kind contribution would be reported on Schedule C of your campaign finance report (Form 102ND) for the reporting period during which you provide the committee with the printing.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter, and on statements made during conversations between you or other Crane officials and OCPF staff. Please contact us if you have further questions.

Sincerely,

A handwritten signature in dark ink, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan
Director